

FEDERAL ELECTION COMMISSION
999 E STREET, N.W.
WASHINGTON, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

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JUL 20 2001

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SENSITIVE

MUR 5039R

DATE COMPLAINT FILED: July 6, 2000

DATE OF NOTIFICATIONS: July 11, 2000

DATE ACTIVATED: July 30, 2001¹

EXPIRATION OF STATUTE

OF LIMITATIONS: June 17, 2005

COMPLAINANT:

Roy Temple, Executive Director

Missouri State Democratic Committee

RESPONDENTS:

Federer for Congress Committee

Thomas M. Busken, as treasurer

William J. Federer

Mark Ludwig

MUR 5112

DATE COMPLAINT FILED: October 11, 2000

DATE OF NOTIFICATIONS: October 17, 2000

DATE ACTIVATED: August 24, 2001

EXPIRATION OF STATUTE

OF LIMITATIONS: October 21, 2004

COMPLAINANT:

Roy Temple, Executive Director

Missouri State Democratic Committee

RESPONDENTS:

Federer for Congress Committee

Thomas M. Busken, as treasurer

William J. Federer

Hutchings Marketing, Inc

Pre-MUR 399

DATE COMPLAINT FILED: April 30, 2001

DATE ACKNOWLEDGED: May 3, 2001

DATE ACTIVATED: August 23, 2001

EXPIRATION OF STATUTE

¹These matters were transferred to different staff members on January 17, 2002, April 15, 2002, and January 17, 2003

OF LIMITATIONS: August 31, 2004

RESPONDENTS:

Federer for Congress Committee
Thomas M. Busken, as treasurer
William J. Federer
Paul Matteucci
Sue Federer

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

RELEVANT STATUTES.

2 U.S.C. § 431(4), (8), (11)
2 U.S.C. § 434(b)
2 U.S.C. § 439a
2 U.S.C. § 441a(a)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b

I. INTRODUCTION

Before the Commission are two complaints and a referral from the U.S. Department of Justice ("DOJ") alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by the Federer for Congress Committee and Thomas M. Busken, as treasurer (the "Committee" or "Respondents").² These three matters are being presented together because they involve similar respondents and related issues.

The complainant in MUR 5112 alleges that the Committee failed to provide an adequate purpose for disbursements. The remaining allegations raised by the three matters are that the Committee failed to report employees' salaries (MUR 5112); the Committee's campaign van was used improperly (MUR 5112); the Committee received an impermissible \$5,000 contribution, which it failed to report (MUR 5039R); the Committee received a loan from a corporation, since repaid, to cover printing costs of a book written by Mr. Federer, *America's God and Country*. An *Encyclopedia of Quotations* (Pre-MUR 399); the Committee's campaign manager attempted to

² MUR 5039 was transferred to ADR on April 3, 2001. The ADR Office received no reply and the case was returned to this Office on June 4, 2001.

1 "turn over" a campaign poll to his opponent's campaign for \$7,000 and asked whether the
2 opponent's campaign manager would be interested in information about other alleged violations
3 (MUR 5039R); the candidate's wife received salary payments from the Committee (Pre-MUR
4 399); the Committee failed to provide a campaign worker with an Internal Revenue Service
5 Form 1099 (Pre-MUR 399); Mr. Federer allegedly accepted a watch from an unidentified
6 contributor (Pre-MUR 399); someone associated with the campaign accepted a \$50 cash
7 contribution which may have not been turned over to the Committee (Pre-MUR 399); an
8 unidentified individual offered to pay for the campaign filing fee for someone with the name
9 "Gephardt" (Pre-MUR 399); and a campaign worker was given \$40 from \$800 in currency and
10 was offered \$5,000 in cash for security work (Pre-MUR 399).

11 According to the Committee's latest filing, their ending cash on hand as of June 30, 2003
12 was \$140, with debts and obligations owed by the Committee of about \$10,600.³ Mr. Federer
13 filed his 2004 Statement of Candidacy for the U.S. House of Representatives from Missouri's
14 Third congressional district on May 9, 2003. A new Statement of Organization for Federer for
15 Congress 2004 was filed on the same date and that committee filed its first report on July 14,
16 2003.

³ The Committee's 2001 Mid-Year, 2001 Year End, 2002 Mid-Year, 2002 Year End, 2003 April Quarterly, and 2003 July Quarterly Reports have been filed in paper form, although filings in electronic formats were required by 11 C.F.R. § 104.18(a)(1) and (2). In Administrative Fine #502 the Commission voted to take no action with respect to the Committee's 2001 Mid-Year Report. See *Withdrawal and Resubmission of Reason to Believe Recommendations - 2001 Mid-Year Report for the Administrative Fines Program*, Memorandum from John D. Gibson, Assistant Staff Director, Reports Analysis Division (October 29, 2001). This Office makes no recommendation with respect to the Committee's filing of subsequent paper reports because the reports were due after the establishment of the Administrative Fines Program. See *Administrative Fine Program Internal Procedures, Selection Criteria and Calculation of Fines for Late and Non-Filers*, Memorandum from Alison L. Doone, Deputy Staff Director (June 29, 2000).

II. FACTUAL AND LEGAL ANALYSIS

A. Law⁴

1. Reporting Purpose of Disbursements and Salaries

The Act requires all political committees to file reports of their receipts and disbursements. 2 U.S.C. § 434(a)(1). Political committees other than authorized committees shall report the full name and address of each person to whom an expenditure of over \$200 is made within the calendar year, together with the date, amount and purpose of such reporting expenditure. 2 U.S.C. § 434(b); 11 C.F.R. § 104.3(b)(4)(i). "Purpose" means a brief statement or description of why the disbursement was made. 11 C.F.R. § 104.3(b)(4)(i)(A). Vague descriptions of disbursements, such as "advance," "outside services," and "miscellaneous" do not fulfill the Act's reporting requirements. *Id.* Salary payments are considered operating expenditures and must be itemized and reported as any other type of committee operating expenditure. 11 C.F.R. §§ 104.3(b)(2)(i) and 104.3(b)(4)(i).

2. Excessive Contributions

The Act defines the term "contribution" as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). The Act limits the amount that persons other than multicandidate committees may contribute to any candidate for federal office to \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). Candidates and political committees are prohibited from knowingly accepting contributions in excess of the limitations of Section 441a. 2 U.S.C. § 441a(f). When a committee receives an excessive contribution, the committee must either refund the excessive portion of the contribution or the contributor must provide the

⁴ The activity in this matter is governed by the Act and Commission regulations in effect during the 1999-2000 election cycle, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All references to the Act and regulations exclude the changes made by BCRA.

committee with a redesignation or reattribution, both within 60 days after receipt of the contribution. 11 C.F.R. § 103.3(b)(3).

3. Personal Use

Using campaign funds for personal use is prohibited. 2 U.S.C. § 439a. Personal use is any use of funds in a campaign account of a candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or responsibilities as a federal officeholder. 2 U.S.C. § 439a; 11 C.F.R. § 113.1(g) Campaign funds cannot be used to pay for expenses relating to the personal use of a campaign vehicle unless those expenses are insignificant in relation to the overall vehicle use. 11 C.F.R. § 113.1(g)(1)(ii)(D). The Commission decides on a case-by-case basis whether vehicle expenses of more than a de minimis amount will constitute "personal use." *Id.*

Certain uses of campaign funds are considered per se personal use. 11 C.F.R. § 113.1(g)(1)(i). Among these are salary payments to family members, unless they are fair market value payments for bona fide, campaign-related services. Any salary payment in excess of the fair market value of the services provided is personal use. 11 C.F.R. § 113.1(g)(1)(i)(H).

4. Prohibited Corporate Contributions

The Act prohibits corporations and banks from making contributions in connection with a Federal election and defines "contribution" to include "any loan or advance . . . to any candidate, [or] campaign . . ." in connection with any Federal election. 2 U.S.C. §§ 441b(a) and 441b(b)(2). The Act prohibits any person from knowingly accepting or receiving any contribution prohibited by 2 U.S.C. § 441b. 2 U.S.C. § 441b(a) Bank loans made in the ordinary course of business are not prohibited. 2 U.S.C. § 441b(b)(2). Commission regulations provide that both incorporated vendors and unincorporated vendors, in their capacity as

1 commercial vendors, may extend credit to a political committee, provided that the credit is
2 extended in the entity's ordinary course of business and that the terms are substantially similar to
3 extensions of credit to nonpolitical debtors. 11 C.F.R. § 116.3(b). Otherwise, the extension of
4 credit is a contribution. 11 C.F.R. § 100.7(a)(4). In determining whether a corporate or
5 unincorporated entity extended credit in the ordinary course of business, the Commission will
6 consider whether the entity followed its own procedures when granting credit, whether the
7 committee repaid the loan promptly, and whether the terms of the loan were in accordance with
8 established business practices. 11 C.F.R. § 116.3(c)(1), (2), and (3).

9 **B. Facts and Analysis**

10 **1. Alleged Failure to Report Employees' Salaries and Failure to Provide an**
11 **Adequate Purpose for Disbursements (MUR 5112)**

12 The complainant in MUR 5112 alleges that the Committee violated reporting provisions
13 of the Act by concealing the identity of campaign staff who received salaries and other
14 disbursements from the Committee by "funneling" those payments through a marketing
15 company, Hutchings Marketing, Inc. ("Hutchings").⁵ The complainant further alleges that the
16 Committee failed to adequately report the purpose of certain payments to Hutchings. Some of
17 the payments to the marketing company were described in reports filed with the Commission
18 simply as "campaign services" and "services rendered."

19 Respondents state that the Committee hired Hutchings to provide political and
20 fundraising services, temporary staffing, and office equipment rental. The Respondents assert

⁵ The complainant based his allegations on the following press reports from the *St Louis Post-Dispatch*: Jo Mannies, "Manager of campaign for Gephardt rival contacts Democrats seeking job," *St Louis Post-Dispatch*, June 29, 2000 at B4; Jo Mannies, "Democrats allege Federer took contributions above limit, failed to report some donations," *St Louis Post-Dispatch*, June 30, 2000 at B5; Jo Mannies, "Some Republicans wonder what Federer did with all his money," *St Louis Post-Dispatch*, July 23, 2000; Deirdre Shesgreen, "Funding of candidate for Congress stirs debate," *St Louis Post-Dispatch*, Aug. 3, 2000 at A10; and Carolyn Tuft and Jo Mannies, "Critics question Federer's link to firm," *St Louis Post-Dispatch*, Sept. 21, 2000 at A8

1 that hiring a company for these services does not violate the Act. With respect to the purposes of
2 disbursements, Respondents contend that their descriptions were proper and that any insufficient
3 descriptions were an oversight and unintentional. Respondents further submitted a sworn
4 affidavit from Thomas Busken, the Committee's treasurer and a licensed CPA. The treasurer
5 states that he reviewed the Committee's reports filed between July 1999 and July 2000 and found
6 that ten of 38 Hutchings Marketing entries labeled "services rendered" were in fact for political
7 consulting services, temporary staffing, and office equipment rental. The treasurer states that
8 after the December 1999 reporting period, the disclosed purpose of disbursements was more
9 detailed.

10 George Hutchings was notified of the complaint as the registered agent of Hutchings
11 Marketing, Inc., and in his sworn and notarized response states that from the middle of
12 September 1999 through November 2000 the firm provided consulting and fundraising services
13 to the campaign, along with staffing and rental of office equipment. The response states that the
14 campaign was invoiced in a timely manner, usually monthly, and that invoices were payable
15 upon receipt.

16 The available information shows that the Committee failed to disclose an adequate
17 purpose of each expenditure in an aggregate amount or value in excess of \$200. 2 U.S.C.
18 § 434(b)(5) and 11 C.F.R. §§ 104.3(b)(4) and 104.3(b)(4)(i). The Committee was required to
19 report the correct purpose for its disbursements to Hutchings and its other vendors. If the
20 disbursements to Hutchings were for individuals to whom salaries were paid by Hutchings and
21 the staffers were employed by Hutchings and not the Committee, the Committee was required
22 to report the amount of the expenditure made to Hutchings as payment for temporary staffing.
23 Further, the Committee was required to report disbursements to Hutchings and its other vendors

1 with the specificity required by the Act and Commission regulations and not use general mixed
2 descriptions such as political consulting, temporary staffing needs and office equipment rental

3 The Committee's 1999 Year End Report discloses 20 disbursements on Schedule B for
4 Line 17 (Operating Expenditures), including 10 disbursements to Hutchings, totaling
5 \$76,968.97 disclosing their purpose as "services rendered." The Reports Analysis Division
6 addressed this issue with the Committee in a Request for Additional Information ("RAI") that
7 was sent to the Committee on November 28, 2000. In response, the Committee changed the
8 entries to include multiple purposes for individual disbursements, rather than provide the
9 separate purpose for each, thus exacerbating the issue. For example, the purposes for all of the
10 payments to Hutchings were changed to "marketing, computer equipment, temp. staffing."

11 The issue next arose on the Committee's 2000 July Quarterly Report. Of 16 payments to
12 Hutchings, 11 disbursements totaling \$50,989.12 had inadequate purposes, such as "consultant
13 fees" or "services & supplies." The items were later amended to provide inadequate multiple
14 purposes for single disbursements. The 2000 12 Day Pre-Primary Report itemized one
15 disbursement to Hutchings for "consulting, manager, temp" for \$14,160.68. The 2000 October
16 Quarterly Report itemized 3 disbursements to Hutchings totaling \$46,743.44 for "consulting,
17 computers, equipment, temp. staffing." The 2000 12 Day Pre-General Report itemized one
18 disbursement to Hutchings for \$27,548 for "consulting, computer equipment, temp. staffing,"
19 later amended to "office management, temp. staffing, equipment rental, media." The 2000 30
20 Day Post-General Report disclosed two payments to Hutchings totaling \$20,510 for
21 "consulting, equipment, temp staffing, marketing." Finally, the 2000 Year End Report discloses
22 4 disbursements to Hutchings totaling \$5,619 for "consulting/staffing" and
23 "consulting/equip/securi[ty]."

As described above, the Committee failed to provide an adequate purpose for disbursements to Hutchings and other vendors totaling, at a minimum, \$242,539.21. 11 C.F.R. § 104.3(b)(4)(i)(A). Therefore, this Office recommends that the Commission find reason to believe that the Federer for Congress Committee and Thomas M. Busken, as treasurer, violated 2 U.S.C. § 434(b). Because the obligation for properly reporting disbursements rests with the Committee, this Office recommends that the Commission find no reason to believe that Hutchings Marketing, Inc., violated the Act in MUR 5112, and close the file with respect to them.

2. Alleged Impermissible \$5,000 Contribution (MUR 5039R)

The complainant alleges that on June 17, 2000 Mr. Federer's campaign manager, Mark Ludwig, met with Democratic Missouri State Representative May Scheve. Transcripts of phone messages Mark Ludwig left for Ms. Scheve are provided in the complaint. At the meeting, Mr. Ludwig allegedly told Ms. Scheve that he contemplated quitting Mr. Federer's campaign. The complainant describes how Mr. Ludwig, in his conversation with Ms. Scheve, referenced a purported \$5,000 check, written by an individual that was deposited and used by the Committee but not reported to the Commission. Further, Mr. Ludwig allegedly claimed to have a copy of the check at his apartment and offered to show a copy of such a check to Ms. Scheve.

The Committee's response includes a statement affirmed under penalty of perjury from its treasurer Thomas Busken averring that he neither received nor is aware of any \$5,000 "personal" check. Similarly, Mr. Federer affirms in his statement, "As said candidate, I have never received nor am I aware of the Federer for Congress campaign ever receiving any personal check in the amount of [\$5,000]." Further, a letter from Mark Ludwig accompanies the Committee's response. Mr. Ludwig states that the complaint contained mischaracterizations and

1 misrepresentations. Mr. Ludwig responds to the complaint's central charge with an unsworn
2 statement that he has no knowledge of any \$5,000 "contribution by an individual" used or
3 deposited by the Committee. The Committee's response concludes by asserting that the
4 complaint was politically motivated.

5 There is a lack of specific facts provided regarding the Committee's alleged receipt of a
6 \$5,000 impermissible contribution. Mr. Ludwig, who according to a newspaper article and the
7 complaint purported to have personal knowledge of such a check, has denied its existence in his
8 unsworn statement included with the Committee's response. Further, affidavits from Mr.
9 Federer and the Committee's treasurer support the Committee's assertion that no such
10 impermissible contribution was received, and hence no reporting obligation would arise. Thus,
11 this Office recommends that the Commission find no reason to believe that the Federer for
12 Congress Committee and Thomas M. Busken, as treasurer, violated 2 U.S.C. §§ 434(b) and
13 441a(f) in connection with the alleged failure to report a \$5,000 contribution from an individual

14 Messrs. Federer and Ludwig were named as respondents in MUR 5039R. Because this
15 Office concludes based on the available evidence that no impermissible contribution was made,
16 this Office further recommends that the Commission find no reason to believe that William J.
17 Federer and Mark Ludwig violated any provision of the Act in this matter.

18 **3. Alleged Personal Use of Campaign Van (MUR 5112)**

19 The complainant in MUR 5112 alleges that a van purchased or leased by the Committee
20 was not exclusively used by the Committee, thus violating the personal use provisions of the
21 statute and regulations. See 2 U.S.C. § 439a and 11 C.F.R. §§ 113.1(g) and 113.2. The basis for
22 the complainant's allegation is itemized disbursements on the Committee's reports related to the
23 purchase or lease of a vehicle.

1 The Committee's response with respect to the allegations involving the campaign van
2 describes the campaign's purchase and use of the van. The response provides that the
3 Committee purchased a Ford van.⁶ According to the Committee, fifteen different drivers used
4 the van, Mr. Federer and his wife have personal vehicles and hence no need to use the van in the
5 manner alleged in the complaint, and the van was used only for purposes related to the campaign.
6 In his affidavit, Mr. Federer states that the van was not used for personal use. The Committee's
7 response concludes by asserting that the complaint was politically motivated.

8 Because there is an inadequate basis for an affirmative finding, this Office recommends
9 that the Commission find no reason to believe a violation occurred. "Absent personal
10 knowledge, the Complainant, at a minimum, should have made a sufficiently specific allegation .
11 . . so as to warrant a focused investigation that can prove or disprove the charge."⁷ Furthermore,
12 "[u]nwarranted legal conclusions from asserted facts . . . or mere speculation, . . will not be
13 accepted as true" and "a complaint may be dismissed if it consists of factual allegations that are
14 refuted by sufficiently compelling evidence in response to the complaint, *see* MUR 4852
15 (Wiebe), or available from public sources such as the Commission's reports database."⁸ In the
16 instant matter there is simply no information provided regarding specific incidents of personal
17 use. Mr. Federer provided an affidavit that averred that the van was used for campaign purposes,
18 that he did not use the campaign van for personal use, and that he owned other vehicles for his
19 personal use. The complainant provides no other information as to the alleged personal use of
20 the campaign van. Therefore, this Office recommends that the Commission find no reason to

⁶ The Committee's reports disclose regular \$811.79 payments to Ford Motor Credit for car payments and payments for car insurance.

⁷ Commissioners Mason, Sandstrom, Smith, and Thomas, Statement of Reasons in MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee) (Dec. 21, 2000) at 3.

⁸ *Id.* at 2.

1 believe that William Federer violated 2 U.S.C. § 439a with respect to the use of a campaign van
2 and close the file as it pertains to him.

3 **4. Alleged Corporate Contribution to the Committee (Pre-MUR 399)**

4 The DOJ referral included a Federal Bureau of Investigation (FBI) Letterhead
5 Memorandum ("LHM") summarizing various interviews with Mr. Federer and his campaign
6 staff concerning allegations raised in articles appearing in the *St. Louis Post-Dispatch* during the
7 2000 campaign. The referral indicates that the Committee "may have been the recipient of a
8 short-term loan – since repaid – from a corporation ... in order to assist in covering printing costs
9 of a book." Paul Matteucci, Mr. Federer's former campaign manager, admitted that his
10 company, AM & PM, Inc., advanced \$11,491 on behalf of the Committee to the printing
11 company for 3,000 copies of *America's God and Country*, and the campaign later reimbursed
12 AM & PM, Inc., a Missouri corporation. The book was purportedly distributed at campaign
13 fundraisers, usually to individuals making contributions of at least \$50, and occasionally to
14 individuals who did not make contributions.

15 According to the LHM, Mr. Federer stated that at the time that AM & PM, Inc., paid for
16 the books, the campaign did not have the funds available to have additional copies printed for the
17 campaign. Mr. Matteucci provided an invoice from Dickinson Press indicating an "Add on to
18 Job #18747" for 3,000 copies of the book and an invoice from AM & PM, Inc., to the
19 Committee. According to the LHM, the Committee later reimbursed AM & PM, Inc.¹⁰

¹⁰ As noted above, according to the LHM, the Committee allegedly reimbursed AM & PM, Inc., for its advance in connection with the book printing costs. Of the Committee's payments to AM & PM, Inc., however, none lists a purpose that can be associated with the reimbursement. Because this may be a problem associated with the Committee's failure to provide adequate purposes for payments to AM & PM, Inc., no additional recommendation will be made.

1 Because corporate contributions are prohibited and AM & PM, Inc.'s purchase of
2 \$11,491 worth of books for the Committee represented a transfer of something of value, AM &
3 PM, Inc. made and the Committee accepted a prohibited contribution. According to the
4 information available, the Committee did not have the funds available at the time to purchase the
5 books for use in the campaign, and AM & PM, Inc., made the purchase and the books were, in
6 fact, used in the campaign. This Office would generally recommend a finding against the
7 corporation, but is not doing so in this instance because AM & PM, Inc. was administratively
8 terminated in Missouri in September 1999.¹¹ Mr. Matteucci, however, had a role in the
9 transaction as Mr. Federer's campaign manager and as an officer of the corporation. Therefore,
10 this Office recommends that the Commission find reason to believe that Paul Matteucci, as an
11 officer of AM & PM, Inc., violated 2 U.S.C. § 441b(a) by consenting to the making of a
12 corporate contribution and by accepting or receiving the prohibited contribution. This Office
13 also recommends that the Commission find reason to believe that Federer for Congress
14 Committee and Thomas M. Busken, as treasurer, violated 2 U.S.C. § 441b(a) by receiving a
15 corporate contribution.

16 5. Alleged Offer to Sell Committee Poll (MUR 5039R)

17 The complainant in MUR 5039R alleges that Mr. Ludwig offered to "turn over" a
18 Committee campaign poll to his opponent's campaign for \$7,000. Because there is no evidence
19 that this offer was accepted, the poll was not converted to personal use because Mr. Ludwig did
20 not actually benefit from his alleged attempt to use the poll for personal gain. 2 U.S.C. § 439a.

¹¹ Under Missouri law the dissolution of a corporation does not "prevent commencement of a proceeding by or against the corporation in its corporate name" Mo. St. § 351.476(2) (2001). See *Mabin Const. Co., Inc. v. Historic Constructors, Inc.*, 851 S.W.2d 98, 103 (Mo. Ct. of App. W.D. 1993) ("The provisions of the new statutory scheme clearly show that the administratively dissolved corporation continues its corporate existence and can be sued in its corporate name by serving the registered agent.") AM & PM, Inc., however, because it is dissolved, likely has no assets to pay a civil penalty in conciliation or satisfy a judgment.

1 Thus, this Office recommends that the Commission find no reason to believe that Mark Ludwig
2 violated any provision of the Act in MUR 5039R.

3 **6. Committee Payments to Candidate's Wife (Pre-MUR 399)**

4 According to the LHM, Mr. Ludwig alleged that the Committee paid the candidate's
5 wife, Sue Federer, \$700 per month for no work. The payments were purportedly made through
6 Hutchings. LHM at 2.

7 The Committee reported disbursements to Sue Federer of \$1,290 on March 23, 1999
8 (Purpose: Office administrator). Although the Committee made disbursements to Hutchings, as
9 noted above the inadequate purpose of some of these disbursements, the subject of a
10 recommendation from this Office, makes it unclear what Hutchings payments reported on the
11 Committee's 1999 Year End Report were for salary expenses.

12 The information available provides no indication that the payments made directly to the
13 candidate's wife were for anything other than her bona fide services to the campaign for fair
14 market value. The payments were itemized properly as disbursements. In addition, Mr. Ludwig
15 cited "the clash he was having with the candidate's wife" as the reason he wanted to leave the
16 campaign. This is suggestive of her involvement in the campaign. Therefore, this Office
17 recommends no reason to believe that Sue Federer violated 2 U.S.C. § 439a with respect to this
18 allegation.

19 **7. Allegations with Respect to Which this Office Recommends No Action (Pre-MUR**
20 **399)**

21 The LHM raises several issues with respect to which this Office recommends no action
22 because they are outside of the Commission's jurisdiction or too vague or unsubstantiated. The
23 LHM describes recordings between Paul Stahl, the campaign's "former security officer" and

Joyce Aboussie, an aide to Mr. Federer's opponent Rep. Gephardt, during which Mr. Stahl made a number of allegations. Mr. Stahl alleged that the Committee failed to provide him with an Internal Revenue Service Form 1099, an issue outside of the Commission's authority. 2 U.S.C. § 437c(b). Mr. Stahl further alleged that Mr. Federer accepted a watch from an unidentified donor, without providing the identity of the donor, the date, or the context of the transaction. The allegation is therefore unsubstantiated, and may also be outside of the Commission's authority because it likely involves a personal gift. Mr. Stahl alleged that someone associated with the campaign accepted a \$50 cash contribution which may have not been turned over to Hutchings and then sent to the campaign. This vague and unsubstantiated allegation would require disproportionately large resources to develop factually given the small amount of money involved. Mr. Stahl alleged that an unidentified individual offered to pay for the campaign filing fee for someone with the name "Gephardt" to run as a "stalking horse" candidate. This charge would most likely implicate ballot access law and is therefore outside of the Commission's jurisdiction. Further, Mr. Stahl also alleged that a campaign worker was given \$40 from \$800 in currency retained by campaign worker and was offered \$5,000 in cash for security work. A \$40 payment from the Committee's petty cash fund would comply with Commission regulations. 11 C.F.R. § 102.11. Finally, according to Mr. Stahl the alleged \$5,000 cash payment offer never materialized, so there would be no application of the Act's requirement that actual payments of such amount be made by check. 2 U.S.C. § 432(h).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

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IV. RECOMMENDATIONS

In MUR 5039R:

1. Find no reason to believe that Federer for Congress Committee and Thomas M. Busken, as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f).

2. Find no reason to believe that Mark Ludwig violated any provision of the Act in MUR 5039R.
3. Find no reason to believe that William J. Federer violated any provision of the Act in MUR 5039R.
4. Close the file in MUR 5039R.
5. Approve the appropriate letters.

In MUR 5112:

6. Find reason to believe that Federer for Congress Committee and Thomas M. Busken, as treasurer, violated 2 U.S.C. § 434(b).
7. Find no reason to believe that Hutchings Marketing, Inc., violated any provision of the Act in MUR 5112 and close the file as it pertains to them.
8. Find no reason to believe that William J. Federer violated 2 U.S.C. § 439a and close the file as it pertains to him.
9. Approve the attached Factual and Legal Analyses.
10. Approve the appropriate letters.

In Pre-MUR 399:

11. Open a MUR in Pre-MUR 399.
12. Find reason to believe that Federer for Congress Committee and Thomas M. Busken, as treasurer, violated 2 U.S.C. § 441b(a).
13. Find reason to believe that Paul Matteucci violated 2 U.S.C. § 441b(a).
14. Find no reason to believe that Sue Federer violated 2 U.S.C. § 439a and close the file with respect to her.
15. Approve the attached Factual and Legal Analyses.
16. Enter into conciliation with Federer for Congress Committee and Thomas M. Busken, as treasurer, prior to a finding of probable cause to believe and approve the attached Conciliation Agreement.
17. Enter into conciliation with Paul Matteucci prior to a finding of probable cause to believe and approve the attached proposed Conciliation Agreement.

18. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

8/15/13
Date

BY: Rhonda J. Vosdingh
Rhonda J. Vosdingh
Associate General Counsel for
Enforcement

Cynthia E. Tompkins
Cynthia E. Tompkins
Assistant General Counsel

Eric S. Brown
Eric S. Brown
Attorney

Attachments:

1. Factual and Legal Analysis – Federer for Congress Committee
2. Factual and Legal Analysis – Paul Matteucci
3. Proposed Conciliation Agreement for Federer for Congress Committee
4. Proposed Conciliation Agreement for Paul Matteucci

Other staff assigned: Mary L. Taksar